

IT 08-2

Tax Type: Income Tax

Issue: Unreported/Underreported Income (Fraud Application)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

THE DEPARTMENT OF REVENUE)	Docket No.	06-IT-0000
OF THE STATE OF ILLINOIS,)	Tax ID No.	000-00-0000
v.)	Tax Years Ending	1999-2004
JOHN & JANE DOE.)		
)	John E. White,	
Taxpayers)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: John Doe appeared, *pro se*, on behalf of taxpayers; Ron Forman, Special Assistant Attorney General, appeared on behalf of the Illinois Department of Revenue.

Synopsis:

This matter involves John and Jane Doe' (taxpayers or the Doe') protest of a Notice of Deficiency (NOD) the Illinois Department of Revenue (Department) issued to them to propose to assess tax deficiencies for calendar years 1999 through 2004.

The hearing was held at the Department's offices in Chicago. John Doe appeared at that hearing. I have reviewed that evidence and I am including in this recommendation findings of fact and conclusions of law. I recommend the NOD be finalized as issued.

Findings of Fact:

1. On July 27, 2006, the Department issued an NOD to taxpayers. Department Ex. 1 (copy of NOD and supporting Statement and schedules).
2. On that NOD, the Department notified taxpayers that the NOD was being issued after the Department determined that they did not include on their originally filed Illinois

income tax returns all of their distributed share of income from ABC, Ltd., an S-corporation in which they were shareholders. Department Ex. 1, p. 2 (Statement).

3. Taxpayers introduced no documentary evidence or testimony to rebut the Department's presumptively correct determination of tax and penalties due from taxpayers.

Conclusions of Law:

When the Department introduced the NODs into evidence under the certificate of the Director, it presented prima facie proof that the Doe' were liable for the tax proposed. 35 ILCS 5/904; PPG Industries, Inc. v. Department of Revenue, 328 Ill. App. 3d 16, 33, 765 N.E.2d 34, 48 (1st Dist. 2002); Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296-97, 421 N.E.2d 236, 239 (1st Dist. 1981). The Department's prima facie case is a rebuttable presumption. Fillichio v. Department of Revenue, 15 Ill. 2d 327, 333, 155 N.E.2d 3, 7 (1958). A taxpayer cannot overcome the presumption merely by denying the accuracy of the Department's assessment, or merely by denying knowledge of a tax deficiency. Balla, 96 Ill. App. 3d at 296-97, 421 N.E.2d at 239. Instead, a taxpayer has the burden to present evidence that is consistent, probable and closely identified with its books and records, to show that the proposed assessment is not correct. PPG Industries, Inc., 328 Ill. App. 3d at 33, 765 N.E.2d at 48 (a taxpayer has the burden of overcoming the Department's *prima facie* case using documentary evidence, meaning books and records, and not mere testimony).

At hearing, John Doe introduced no evidence to show that the Department's determinations were not correct. Instead, he sought a continuance of the hearing, so he could hire an accountant to review documents currently held by another accountant, who

was retired. Tr. pp. 6-7. In response to taxpayer's request, Department counsel noted that taxpayers repeatedly had been offered time to obtain, and to turn over to the Department for review, documents that might tend to rebut the Department's prima facie case. Tr. pp. 9-10. Additionally, when considering Mr. Doe's request, the administrative law judge (ALJ) reviewed orders that had been entered after each status conference was held in this matter, and noted that Mr. Doe (who had personally attended those status conferences) had consistently advised Department counsel and the ALJ that he would be providing the Department with documents to review regarding taxpayers' protest. Orders, dated February 6, 2007, April 4, 2007, May 31, 2007. Further, the order dated May 31, 2007 provided, in part: "Mr. Doe has sent the Department's litigator copies of all the information he has regarding any closure of ABC, Inc. in 2004."

In this case, taxpayers' continuance request was not based on the fact that Mr. Doe had brought to the hearing documents that he wanted to present to the Department for review. *See Six-Brothers King Drive Supermarket, Inc. v. Department of Revenue*, 192 Ill. App. 3d 976, 983, 549 N.E.2d 586, 590 (1st Dist. 1989). Instead, Mr. Doe sought additional time to do what he had repeatedly indicated he would do before the hearing date was even set. Further, taxpayers' continuance request was not sought to allow them time to obtain an attorney to represent them, and the Department's hearing regulations do not require that individual taxpayers be represented by counsel. *See id.*, at 983-84, 549 N.E.2d at 590-91; *see also* 86 Ill. Admin Code § 200.110. Finally, this matter has already been the subject of a dismissal due to taxpayers' default, which was reopened following timely request to vacate that default. Order, dated December 5, 2006. Taxpayers' request for a continuance was, therefore, denied.

Since taxpayers offered no evidence at hearing, they have not satisfied their burden to rebut the Department's presumptively correct determination of tax due. Fillichio, 15 Ill. 2d at 333, 155 N.E.2d at 7; Balla, 96 Ill. App. 3d at 296-97, 421 N.E.2d at 239.

Conclusion:

I recommend the Director finalize the NOD as issued, with interest to accrue pursuant to statute.

February 14, 2008
Date

John E. White, Administrative Law Judge